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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROBERT DARRELL KING,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL
14 SECURITY,

15 Defendant.

16 Case No. C19-5476-RSM

17 ORDER GRANTING PLAINTIFF'S
18 AMENDED MOTION FOR
19 ATTORNEY'S FEES UNDER 42 U.S.C. §
20 406(B)

21 This matter comes before the Court on Plaintiff Robert Darrell King's Amended Motion
22 for \$40,541.25 in attorney's fees under 42 U.S.C. § 406(b). Dkt. #26. Defendant Commissioner
23 of Social Security does not object to the total amount sought. However, the Government opposes
24 Plaintiff's motion to the extent it improperly treats the Equal Access to Justice Act ("EAJA")
25 offset as part of the calculation of 25% past-due benefits, such that Plaintiff's request for 16% of
26 past-due benefits is incorrect. Dkt. #27.

27 The Court finds no error in the Government's argument that Plaintiff's past-due benefits
28 in this case total \$185,403.40 such that Plaintiff's counsel's request for a total of \$40,541.25
 constitutes 21.9% of past due benefits. Indeed, although Plaintiff's amended motion incorrectly

ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR ATTORNEY'S FEES
UNDER 42 U.S.C. § 406(B) - 1

1 cites this figure as 16%, the proposed order attached to the motion lists 21%. *See* Dkt. #26 at 11.
2 After deduction of the EAJA fees totaling \$9,780.00, *see* Dkt. #20, that leaves \$30,761.25 in fees
3 under section 406(b).

4 Furthermore, the Government requests that this Court clarify the source of payments and
5 actions taken in the event of insufficient funds available to satisfy the award, given that the
6 Commissioner is not obligated to pay section 406(b) fees from its general fund. Plaintiff has not
7 objected to this request and the Court finds no basis for denial.

9 **CONCLUSION**

10 Accordingly, having reviewed Plaintiff's Motion, the exhibits and declarations attached
11 thereto, Defendant's Response, and the remainder of the record, the Court ORDERS as follows:

13 (1) Plaintiff's Amended Motion for § 406(b) fees, Dkt. #26, is GRANTED. It is
14 ORDERED that reasonable fees in the amount of \$40,541.25 are awarded to Plaintiff's attorney,
15 Michael Gilbert, pursuant to 42 U.S.C. § 406(b). Upon receipt, counsel will refund directly to
16 Plaintiff the \$9,780.00 in Equal Access to Justice Act ("EAJA") fees of that were previously
17 awarded;

19 (2) This payment of fees comprises 21.9% of Plaintiff's past-due benefits;

20 (3) Any payment of fees is from the claimant's withheld past-due benefits. If the
21 Commissioner has not withheld past-due benefits sufficient to satisfy this order and Plaintiff's
22 attorney reports he is unable to collect the fee from the claimant, the Commissioner will satisfy
23 this Order via the procedures in Program Operation Manual System (POMS) GN 03920.055.C.

26 IT IS SO ORDERED.

1 DATED this 16th day of December, 2021.
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RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR ATTORNEY'S FEES
UNDER 42 U.S.C. § 406(B) - 3